IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH

S.B. Civil Writ Petition No.4647/2003
Vivek Kumar Dubey
Vs.
Life Insurance Corporation & Anr.

14.03.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Mukesh Agrawal for petitioner.
Shri Anurag Agrawal for respondents.

The petitioner has filed this writ petition against the charge-sheet dated 28.1.99 and the final order dated 31.5.1999. It appears from the perusal of the charge-sheet that the petitioner was alleged to have procured bogus policies so as to give artificial rise to the quantum of his business, thereby seeking certain benefits. The Disciplinary Authority after making inquiry into the matter has finally passed the order of penalty dated 31.5.1999 holding the

petitioner guilty of the charges contained in the show cause notice dated 28.1.1999 and awarded the penalty of termination of agency with forfeiture of accrued commission payable under Section 16(1) and 19(1) of the Life Insurance Corporation of India (Agents) Regulations, 1972.

Shri Mukesh Agrawal, the learned counsel for the petitioner apart from making arguments on the merits of the case has also argued that the respondents cannot forfeit the accrued commission anterior to the period of termination of his agency as reading of Section 15, 16 and 19 authorizes them to forfeit commission only in regard to the period posterior to the date of agency.

Shri Anurag Agrawal, the learned

counsel for the respondents however raised an objection about the very maintainability of the writ petition and points out that the final order of penalty which is subject matter of challenge in this writ petition cannot be allowed to be directly questioned in a remedy of writ petition which is an extraordinary remedy and there is no warrant for bypassing statutorily provided for remedy of appeal in the departmental rules. He has pointed out that remedy of appeal is available to the petitioner under Rule 20 of the Life Insurance Corporation of India (Agents) Regulations, 1972 and therefore this Court cannot entertain the writ petition particularly in view of the nature of allegations against the petitioner.

Shri Mukesh Agrawal, the learned counsel for the petitioner however expressed apprehension that if the petitioner is relegated to the remedy of appeal at this stage, his appeal might be taken as time barred and may not even be entertained on merits.

Having heard the learned counsel for the parties and perused the material on record, I find that the arguments raised by the petitioner need to be appreciated in the context of certain factual assertions made in the petition which have been contested by the respondents and those aspects can be better appreciated by the appellate authority.

In the facts of the case especially when this writ petition has

remained pending before this Court since August, 2003, if the petitioner files the appeal within six weeks from today, his appeal should be entertained and decided by the competent authority on merits. I therefore while holding the petition not maintainable give a liberty to the petitioner to prefer an appeal before the competent authority under Rule 20 (supra) within six weeks and if any such appeal is filed within the said period, the same shall be decided on merits within six months thereafter.

With these observations, the writ petition is dismissed with no order as to costs.

(Mohammad Rafiq),J.

Rs/-